peculiar local conditions make state legislation, though indirectly affecting interstate commerce, lawful until Congress has acted in the matter. The court took judicial notice of the fact of the extent of this industry in the state in order to bring the case within the rule. *Sligh* v. *Kirkwood, Sheriff,* 35 Sup. Ct. 501.

Clearly the law is only an exercise of jurisdiction over people and property within the limits of the state and for its ultimate object it has the protection of the state industry rather than any direct regulation of commerce. If this be so it is not in conflict with any constitutional principle. *Southern Ry.* v. *King,* 217 U. S. 524; *Smith* v. *St. Louis, Etc., Ry.,* 181 U. S. 248. Besides the law in no wise interferes with the exportation in inter-state commerce of sound and edible fruit, which would be the only kind for consumption, recognized as the legitimate subject of trade and commerce, *Bowman* v. *Ry. Co.,* 125 U. S. 465. For this reason the case cannot be said to be within the rule of *Welton* v. *Missouri,* 91 U. S. 275, that that class of subjects which requires uniformity of regulation affecting all of the states alike and which a failure to regulate by Congress amounts to a declaration that it shall be free from state regulation, includes the transportation and exportation of commodities for the purpose of trade in any and all forms. The cases upon the power of a state to forbid the exportation of its products are few in number. The Supreme Court has upheld the power as applied to wild game, *Geer* v. *Connecticut,* 161 U. S. 519, water from the streams, *Hudson Water Co.* v. *McCarter,* 209 U. S. 349, but in *West* v. *Kansas Gas Co.,* 221 U. S. 229, the court refused to extend the doctrine to natural gas. See also *Turner* v. *Maryland,* 107 U. S. 38.

CORPORATIONS.—STOCKHOLDERS LIABLE AS PARTNERS.—In an action brought against the defendants as partners for injuries sustained because of the negligence of an employee of the corporation engaged in a business which the corporation was not authorized by law to transact, the defendants being managing stockholders, it was held that the plaintiff could recover, *Staacke* v. *Routledge* (Tex. 1915) 175 S. W. 444.

Where the business is prohibited by law the stockholders who participate therein are liable as partners, *Medill* v. *Collier,* 16 Ohio St. 599. And where the corporation was chartered in another state for a purpose not authorized by the laws of the state in which it transacted business, they are also liable, *Mandeville* v. *Courtwright,* 142 Fed. 97; *Empire Mills* v. *Alston Grocery Co.,* (Tex. Civ. App.) 155 S. W. 503, 12 L. R. A. 366. Also where the entire purpose for which the corporation was organized was unauthorized by state law, the managing stockholders are liable for injuries committed by negligence in the course of that business, *Vredenburg* v. *Behan,* 33 La. Ann. 627. There do not seem to be any cases directly in point with the principal case. In *Tenn. Automatic Lighting Co.* v. *Massey* (Tenn. Ch. App.) 56 S. W. 35, the court said that ultra vires acts by the corporation did not render the members personally liable therefor, but this case is not in point because the defendant was not even a stockholder at the time the contract was exe-

cuted, and the contract sued on was one in which he recognized and contracted with the corporation, so that the doctrine of estoppel was mainly the basis for the result.

DAMAGES.—BREACH OF COVENANT OF WARRANTY OF TITLE.—The Empire Land Company, a corporation, contracted to buy some land from the defendant, the presumed owner, at one dollar an acre, the vendor agreeing to convey to any purchasers from the vendee; the Land Company then contracted to sell part of the same land to the plaintiff for four dollars an acre. Acting on the first agreement defendant deeded directly to the plaintiff with full warranties of title. Later it was discovered that defendant did not convey a good title and the plaintiff sued defendant on the covenant of warranty. *Held,* the breach of such a covenant is measured by the consideration paid by the grantee and not by the amount received by the grantor. *Hunt* v. *Hay,* (N. Y. 1915) 108 N. E. 851.

Several fundamental considerations would seem to justify the conclusion of the court. In the first place, it could be based on the equitiable maxim that of two innocent parties, he should suffer who has made the wrong possible. In the second place, the grantee paid the purchase price in consideration of the covenant given by the grantor, not for anything done or suffered by the third party. This is more apparent when we remember that such a covenant is a guaranty that the grantor will defend and protect the covenantee against all rightful claims presented. *Mitchell* v. *Warner,* 5 Conn. 497; *Bender* v. *Fromberger,* 4 Dall. (Pa.) 441. The logic and conclusion of the court in the principal case is supported by many cases. *McClure* v. *McClure,* 65 Ind. 482; *Bloom* v. *Wolfe,* 50 Ia. 286; *Barnett* v. *Hughey,* 54 Ark. 195; *Rash* v. *Jeune,* 26 Ore. 169; *Graham* v. *Leslie,* 4 Up. Can. C. P. R. 176; *Graves* v. *Mallingley,* 6 Bush. (Ky.) 361. There are several apparently conflicting authorities, notably, *Cook* v. *Curtis,* 68 Mich. 611, and *Staples* v. *Dean,* 114 Mass. 125. But a close examination removes this conflict, for in the last two cases the decision went off on the value of the land, admitting the point in controversy in the case above, that the covenantor had to pay.

DISCOVERY.—EXAMINATION OF DEFENDANT BEFORE TRIAL.—In an action for alienation of his wife's affections, plaintiff secured an order to examine defendant before trial who moved to vacate the same. *Held,* it not appearing that plaintiff honestly intended in good faith, to use his cause of action, he should not be given the right to examine before trial, for it would cast upon the defendant the burden of proving his defense before any case had been made against him. *Dryden* v. *Lattimer,* 151 N. Y. Supp. 121.

This case is the first one to arise in the state of New York involving the right in question when invoked in a suit for alienation of affections. It is fully in accord with previous decisions of the same court, however. An early case states the rule as follows: "Whenever it appears that the examination of the adverse party, before trial, is material and necessary, and that the application thereof is made in good faith, and not for the purpose of improperly extracting evidence from him, an order for examination will